

CITY-COUNTY GENERAL ORDINANCE NO. 92, 2002  
Proposal No. 439, 2002

PROPOSAL FOR A GENERAL ORDINANCE to amend Sec. 732-216 of the Revised Code concerning the adult entertainment business.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE  
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. Sections 732-216 and 732-217 of the "Revised Code of the Consolidated City and County" hereby are amended by the deletion of the language which is stricken-through, and by the addition of the language which is underscored, to read as follows:

**Sec. 732-216. Special regulations, adult entertainment business.**

*Statement of purpose.* ~~In the development and adoption of this chapter, it is recognized that there are some adult business uses which due to their very nature have serious objectionable operational characteristics particularly when located in close proximity to residential neighborhoods, thereby have a deleterious impact upon property values and the quality of life in such surrounding areas. It has been acknowledged by communities across the nation that state and local governmental entities have a special concern in regulating the operation of such businesses under their jurisdiction to ensure that these adverse secondary effects will not contribute to the blighting or downgrading of adjacent neighborhoods nor endanger the well-being of the youth in their communities. The special regulation deemed necessary to control the undesirable externalities arising from these enterprises are set forth below. The primary purpose of these controls and regulations is to preserve the integrity and character of residential neighborhoods, to deter the spread of urban blight and to protect minors from the objectionable operational characteristics of these adult uses by restricting their close proximity to churches, parks, schools and residential areas. It is the purpose of this chapter to regulate Adult Entertainment Businesses and related activities, to promote the health, safety, morals, and general welfare of the citizens of Marion County, and to establish reasonable and uniform provisions to prevent the deleterious effects of Adult Entertainment Businesses within Marion County. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Further, it is not the intent nor effect of this chapter to condone or legitimize the distribution of obscene materials. It is not the intent nor effect of this chapter to limit or restrict the lawful activities permitted under Indiana Code 7.1.~~

*Findings.* Based on evidence concerning the adverse secondary effects of Adult Entertainment Businesses on the community presented in hearing(s) and in reports made available to the City-County Council, and on findings incorporated in the cases of City of Renton v. Playtime Theatres, Inc., 475U.S.41 (1986), Young v. American Mini Theatres, 426U.S.50 (1976), Barnes v. Glen Theatre, Inc., 501U.S.560 (1991), Arcara v. Cloud Books, Inc., 478U.S.697 (1986), California v. LaRue, 409U.S.109 (1972), Iacobucci v. City of Newport, KY, 479U.S.92 (1986), United States v. O'Brien, 391U.S.367 (1968), City of Erie v. Pap's A.M., 120 S.Ct. 1382 (2000), City of Los Angeles v. Alameda Books, Inc., 122 S.Ct. 1728 (2002), Broadway Books, Inc. v. Roberts, 642 F.Supp. 486 (E.D. Tenn. 1986), DLS, Inc. v. City of Chattanooga, 107F.3d403 (6thCir. 1997), Pleasureland Museum, Inc. v. Beutter, 2002 WL 818791 (7th Cir. 2002), Kev, Inc. v. Kitsap County, 793F.2d1053 (9thCir. 1986), Hang On, Inc. v. City of Arlington, 65F.2d1248 (5thCir. 1995), South Florida Free Beaches, Inc. v. City of Miami, 734F.2d608 (11thCir. 1984), and Mitchell et al v. Commission on Adult Entertainment Establishments of the State of Delaware et al, 10F.3d123 (3rdCir. 1993), Ellwest Stereo Theatre, Inc. v. Boner, 718 F.Supp. 1553 (M.D. Tenn. 1989), City of Lincoln Nebraska v. ABC Books, Inc., 470 N.W.2d 760 (Neb. 1991), Berg v. Health & Hosp. Corp. of Marion County, 865 F.2d 797 (7th Cir. 1989), Shultz v. Cumberland, 228 F.3d 831 (7th Cir. 2000), as well as studies conducted in communities including, but not limited to Indianapolis, Indiana; Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; findings reported in the Final Report of the Attorney General's Commission on Pornography (1986), the Report of the Attorney General's Working Group On the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); and statistics of the U.S.Department of Health and Human Services, Centers for Disease Control and Prevention, the City-County Council finds:

- (1) Adult Entertainment Businesses lend themselves to ancillary unlawful and unhealthy activities that are presently insufficiently controlled by the operators of the establishments.
- (2) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where Adult Entertainment Businesses are located.
- (3) Sexual acts, including masturbation, oral sex and anal sex, occur at Adult Entertainment Businesses, especially those which provide booths or cubicles for viewing films, videos, or live sex shows.
- (4) Acts of prostitution commonly occur at Adult Entertainment Businesses.
- (5) Persons frequent certain adult theaters and other Adult Entertainment Businesses for the purpose of engaging in sex within the premises.
- (6) At least 50 communicable diseases may be spread by activities that occur in Adult Entertainment Businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, salmonella infections and shigella infections.
- (7) Prostitution, sexual assaults and other criminal activity occur at Adult Entertainment Businesses.
- (8) Prostitution is connected to the spread of sexually transmitted diseases.
- (9) Adult Entertainment Businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.
- (10) The general welfare, health, morals and safety of the citizens of the City will be promoted by the enactment of this chapter.

(a) *Prohibitions.* The establishment, enlargement, reconstruction, resumption or structural alteration of any adult entertainment business shall be prohibited if such business is within five hundred (500) feet of another ~~two (2) other~~ such businesses or within five hundred (500) feet of any existing church, church zoning district, public, private or parochial school for kindergarten through twelfth grade, school zoning district, park, park zoning district, locally designated historic preservation area established by, and under the jurisdiction of, the Indianapolis Historic Preservation Commission, day care center, day care home ~~historic preservation zoning district or any existing dwelling zoning district~~ within Marion County, Indiana.

Provided further, that no adult entertainment business shall be established, enlarged, reconstructed, resumed or structurally altered unless the site or proposed site is located in a C-4 (Community-Regional Commercial) Zoning District, C-5 (General Commercial) Zoning District, C-6 (Thoroughfare Service) Zoning District, C-7 (High Intensity Commercial) Zoning District or C-ID (Commercial-Industrial) Zoning District.

Provided further, that no adult entertainment business shall be established, enlarged, reconstructed, resumed or structurally altered in a C-4 (Community-Regional Commercial) Zoning District unless the site or proposed site is located within an integrated center.

(b) *Measurement of distances.* The distance between one (1) adult entertainment business and another adult entertainment business shall be measured in a straight line, ~~with~~ without regard to intervening structures or objects, from the closest exterior structural wall of each such business. The distance between an adult entertainment business and any church, church zoning district, public, private or parochial school for kindergarten through twelfth grade, school zoning district, park, park zoning district, locally designated historic preservation area established by, and under the jurisdiction of, the Indianapolis Historic Preservation Commission, day care center, day care home or dwelling zoning district shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior structural wall of the adult entertainment business to the nearest property line of the church, church zoning district, public, private or parochial school for kindergarten through twelfth grade, school zoning district, park, park zoning district, locally designated historic preservation area established by, and under the jurisdiction of, the Indianapolis Historic Preservation Commission, day care center, day care home or dwelling zoning district. If an adult entertainment business is part of or included within an integrated center, only the portion of such center or

leased space occupied by such adult entertainment business shall be included in determining the closest exterior structural wall of such establishment.

(c) *Exterior display.*

- (1) No adult entertainment establishment shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas by display, decorations, sign, show window or other opening from any public view.
- (2) Number of signs. Not more than one (1) business wall sign shall be permitted for an adult entertainment business and such sign shall be permitted only on the front facade. In addition to the one (1) permitted business wall sign, an adult entertainment business not located within an integrated center shall be permitted not more than one (1) pole or ground sign structure if it is an entity of commercial development held in either private ownership or long-term lease, and which meets all of the requirements of the zoning district in which it is located. Such requirements shall include direct access to a public street from that property and a full amount of required parking on the site with the use. All other sign structures shall be prohibited.
- (3) Sign surface area. The sign surface areas of a business wall sign for an adult entertainment business shall not exceed an amount equal to five (5) percent of the front building facade of the first floor elevation (first ten (10) feet) of the premises occupied by the adult entertainment business, or one hundred (100) square feet, whichever is the lesser. The maximum sign surface area of a ground or pole sign structure, where permitted, shall not exceed one (1) square foot for each lineal foot of frontage of the lot, or thirty-six (36) square feet, whichever is the lesser.
- (4) Lighting. Signs and sign structures may be illuminated, provided, however, such illumination shall not be by way of exposed neon, exterior lighting (e.g., spot or floodlights), or any flashing or animated lights (either interior to the sign, on the exterior of the sign, or as a border to the sign).

(d) *Parking.* Parking for an adult entertainment business shall be provided on the site with the use. There shall be at least one (1) parking space for each two hundred eighty-five (285) square feet of floor area or one (1) parking space for every two (2) seats of seating capacity, whichever standard results in the higher requirement.

(e) *Continuation of nonconforming use.* The lawful use of land or buildings existing at the times of the adoption of this chapter may continue although such use does not conform to the regulations specified herein, subject to the provisions set forth in subsection (a) above.

**Sec. 732-217. Construction of language and definitions.**

(a) *Construction of language.* The language of this article shall be interpreted in accordance with the following regulations:

- (1) The particular shall control the general.
- (2) In the case of any difference of meaning or implication between the text of this article and any illustration or diagram, the text shall control.
- (3) The word "shall" is always mandatory and not discretionary. The word "may" is permissive.
- (4) Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
- (5) A "building" or "structure" includes any part thereof.
- (6) The phrase "used for," includes "arranged for," "designed for," "intended for," "maintained for," or "occupied for."

(7) Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction "and," "or," or "either . . . or" the conjunction shall be interpreted as follows:

- a. "And" indicates that all the connected items, conditions, provisions, or events shall apply.
- b. "Or" indicates that the connected items, conditions, provisions, or events may apply singly or in any combination.
- c. "Either . . . or" indicates that all the connected items, conditions, provisions, or events shall apply singly but not in combination.

(b) *Definitions.* The words in the text or illustrations of this chapter shall be interpreted in accordance with the following definitions. The illustrations and diagrams in this section provide graphic representation of the concept of a definition; the illustration or diagram is not to be construed or interpreted as a definition itself.

*Access.* The way by which vehicles shall have ingress to and egress from a land parcel or property and the street fronting along such property or parcel.

*Access drive.* That area within the right-of-way between the pavement edge or curb and the right-of-way line providing ingress and egress to and from a land parcel or property (see Diagram A).

*Accessory.* A subordinate structure, building or use that is customarily associated with, and is appropriately and clearly incidental and subordinate in use, size, bulk, area and height to the primary structure, building, and use, and is located on the same lot as the primary building, structure, or use.

*Administrator.* Administrator of the division of ~~neighborhood and development services~~ planning of the department of metropolitan development or his/her appointed representative.

*Adult bookstore.* An establishment having ~~as a preponderance~~ at least twenty-five percent (25%) of its:

- (1) Retail floor space used for the display of adult products; or
- (2) ~~Stock in trade~~ consisting of adult products; or
- (3) ~~its dollar volume in trade;~~ Weekly revenue derived from adult products.

For purposes of this definition, the phrase adult products means books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas. For purposes of this definition, the phrase adult products also means a device designed or marketed as useful primarily for the stimulation of human genital organs, or for sadomasochistic use or abuse. Such devices shall include, but are not limited to, phallic shaped vibrators, dildos, muzzles, whips, chains, bather restraints, racks, non-medical enema kits, body piercing implements (excluding earrings or other decorative jewelry) or other tools of sado-masochistic abuse.

*Adult cabaret.* A nightclub, bar, theatre, restaurant or similar establishment which frequently features live performances by topless or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas or which regularly feature films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.

*Adult drive-in theatre.* An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions, and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats in which a preponderance of the total

presentation time is devoted to the showing of materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

*Adult entertainment business.* An adult bookstore, adult motion picture theatre, adult mini motion picture theatre, adult motion picture arcade, adult cabaret, adult drive-in theatre, adult live entertainment arcade or adult services establishment.

*Adult live entertainment arcade.* Any building or structure which contains or is used for commercial entertainment where the patron directly or indirectly is charged a fee to view from an enclosed or screened area or booth a series of live dance routines, strip performances or other gyrational choreography, which performances are distinguished or characterized by an emphasis on specified sexual activities or by exposure to specified anatomical areas.

*Adult mini motion picture theatre.* An enclosed building with a capacity of more than five (5) but less than fifty (50) persons, used for presenting films, motion pictures, video cassettes, slides or similar photographic reproductions in which a preponderance of the total presentation time is devoted to the showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

*Adult motel.* A hotel, motel or similar establishment offering public accommodations for any form of consideration which provides patrons, upon request, with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

*Adult motion picture arcade.* Any place to which the public is permitted or invited wherein coin- or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

*Adult motion picture theatre.* An enclosed building with a capacity of fifty (50) or more persons used for presenting films, motion pictures, video cassettes, slides or similar photographic reproductions in which a preponderance of the total presentation time is devoted to showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

*Adult service establishment.* Any building, premises, structure or other facility, or part thereof, under common ownership or control which provides a preponderance of services involving specified sexual activities or display of specified anatomical areas.

*Alley.* Any public right-of-way which has been dedicated or deeded to and accepted by the public for public use as a secondary means of public access to a lot(s) otherwise abutting upon a public street and not intended for traffic other than public services and circulation to and from such lot(s).

*Alteration.* Any change in type of occupancy, or any change, addition or modification in construction of the structural members of an existing structure, such as walls, or partitions, columns, beams or girders, as well as any change in doors or windows or any enlargement to or diminution of a structure, whether it be horizontally or vertically.

*Amusement arcade.* A type of indoor commercial amusement/recreation establishment where more than four (4) amusement machines are available to the public.

*Amusement machine.* An amusement device operated by means of the insertion of a coin, token, or similar object for the purpose of entertainment, amusement or skill and for the playing of which a fee is charged. "Amusement machine" does not include vending machines which do not incorporate gaming amusement or skill features, nor does the term include any coin-operated mechanical musical device.

*Amusement/recreational establishment, commercial.* See (indoor/outdoor) commercial amusement/recreational establishment.

*Assisted living facility.* A residential facility that provides a combination of housing, social activity, supportive services, personalized assistance, and health care, designed to foster independent living, yet respond to the individual needs of those who need help with activities of daily living (ADL - For purposes of this definition this means such activities as walking, eating, dressing, bathing, toileting, and transfer between, or in and out of a chair or bed) and Instrumental activities of daily living (IADL - For purposes of this definition this means activities such as doing laundry, cleaning of living areas, meal preparation, engaging in recreational or leisure activities, taking medications properly, managing money and conducting business affairs, using public transportation, writing letters, or using the telephone). Supportive services are available twenty-four (24) hours a day to meet scheduled and unscheduled needs of residents. Such facilities are not licensed as a nursing home. Facilities have single- or double-occupancy living units which contain most dwelling unit features, such as lockable units, a food preparation area, and a full bathroom facility.

*Attached multifamily dwelling.* See dwelling, attached multifamily.

*Automated teller machine (ATM).* A mechanized apparatus which performs limited banking functions for customers such as deposits, withdrawals and transfers of funds upon insertion of a customer identification card, password, or similar device.

*Awning.* A roof-like cover, often of fabric, metal, plastic, fiberglass or glass, designed and intended for protection from the weather or as a decorative embellishment, and which is supported and projects from a wall or roof of a structure over a window, walk, door, or the like.

*Basement.* That portion of a building with an interior vertical height clearance of not less than seventy-eight (78) inches and having one-half or more of its interior vertical height clearance below grade level.

*Bed and breakfast.* The commercial leasing of no more than four (4) bedrooms(s) for no more than eight (8) guest(s) within a private dwelling unit. Such leasing provides temporary accommodations, typically including a morning meal, to overnight guests for a fee.

*Boarding house.* A building, other than hotels, motels, bed and breakfasts or multifamily dwelling, containing accommodation facilities in common for up to ten (10) persons where lodging, typically with meals, reserved solely for the occupants thereof, is provided for a fee.

*Buildable area.* The area of a lot remaining after the minimum yard and open space requirements of the applicable zoning ordinance(s) have been met (see Diagram B).

*Building.* Any structure designed or intended for the support, enclosure, shelter, or protection of persons, animals, or property of any kind, having a permanent roof supported by columns or walls.

*Building area.* The total ground area, within the lot or project, covered by the primary structure plus garages, carports and other accessory buildings. The ground area of a structure, or portion thereof, not provided with surrounding exterior walls shall be the area immediately under the vertical projection of the roof or the floor above (see Diagram B).

*Canopy.* A roof-like cover, often of fabric, metal, plastic, fiberglass, or glass on a support, which is supported in total or in part from the ground, providing shelter over, for example, a doorway, outside walk or parking area.

*Collector street.* See street, collector.

*Commercial garage.* See garage, commercial.

*Commission.* The Metropolitan Development Commission of Marion County, Indiana.

*Commitment.* An official agreement concerning and running with the land as recorded in the office of the Marion County Recorder.

*Community center.* A building used for recreational, social, educational and cultural activities of a neighborhood or community.

*Comprehensive plan.* The Comprehensive Plan for Marion County, Indiana, or segment thereof, adopted by the Metropolitan Development Commission of Marion County, Indiana, pursuant to IC 36-7-4.

*Condition.* An official agreement between the municipality and the petitioner concerning the use or development of the land as imposed by the Board of Zoning Appeals.

*Convenience market.* A retail establishment selling a limited number of food items, such as sandwiches, snacks, staple groceries, household items, lottery tickets and food items prepared on the premises, including reheating, which can be immediately consumed. Such establishments may also provide a facility where gasoline and other motor fuels are stored and subsequently dispensed by use of fixed, approved dispensing equipment by customers of the establishment on a self-service basis.

*Corner lot.* See lot, corner.

*Covenant.* A legal agreement concerning the use of land.

*Crown of the street.* The highest point, most often at the center line, of a street cross-section of the street pavement between the existing curb lines.

*Cul-de-sac.* See street, cul-de-sac.

*Curb cut.* The opening along the curb line, exclusive of handicap ramps, at which point vehicles may enter or leave the street (see Diagram A).

*Curb line.* A line located on either edge of the pavement, but within the right-of-way line (see Diagram A).

*Customer service window.* Opening on the exterior of a building through which customers receive goods or services in exchange for monetary compensation.

*Dance studio.* An establishment primarily engaged in operating and providing training, instruction, and demonstrations or recitals in various forms of dance to individuals or groups.

*Day care center.* Any institution or place operated for the purpose of providing:

- (1) Care;
- (2) Maintenance; or
- (3) Supervision and instruction;

to children who are less than six (6) years old and are separated from their parent(s), guardian, or custodian for more than four (4) hours but less than twenty-four (24) hours a day for ten (10) or more consecutive workdays, where tuition, fees or other forms of compensation are charged, and which is licensed by, and approved to operate as a day care center in accordance with the requirements of the State of Indiana. This definition shall not include a "day care home" of children.

*Day care home.* Defined in IC 12-3-2-3 as follows: A residential structure where an individual provides child care:

- (1) For compensation;



- (2) For more than four (4) hours but less than twenty-four (24) hours in each of ten (10) consecutive days per year, excluding holidays; and
- (3) To more than five (5) children at a time who:
  - a. Are less than eleven (11) years of age; and
  - b. Are not attended by:
    1. A parent;
    2. A stepparent;
    3. A guardian;
    4. A custodian; or
    5. A relative who is at least eighteen (18) years of age.

*Day nursery.* Same as day care center.

*Display, outdoor.* An outdoor area where merchandise is displayed for sale, and which is freely accessible to the public except that automobile retail sales areas shall be considered outdoor display areas whether freely accessible or not. Outdoor display may be the principal use of a lot or may be accessory to a commercial use (as allowed by the zoning district) when the sales transactions occur within a structure.

*Dripline.* The perimeter of a tree's spread measured to the outermost tips of the branches and extending downward to the ground.

*Drive-in.* A business establishment so developed that its retail or service character is dependant on providing a driveway approach or parking spaces for motor vehicles to service patrons while in or on the motor vehicle, rather than within a building.

*Drive-through.* A feature of an establishment which encourages or permits customers to receive services or obtain goods while remaining in or on a motor vehicle.

*Drive-through customer window.* See customer service window.

*Drive-through restaurant.* See restaurant, drive-through.

*Driveway.* Access for vehicular movement to egress/ingress between the right-of-way of private or public streets and the required building setback line (see Diagram A).

*Dry cleaning plant.* A facility in which the cleaning of garments, fabrics, draperies, etc., is performed with a liquid other than water. The plant is generally not visited by individual customers, but rather by individual dry cleaning dropoff establishments.

*Dwelling, attached multifamily.* A building or buildings for residential purposes with three (3) or more dwelling units, having common or party wall or walls, on a single lot. Each unit is totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common or individual stairwell(s) exterior to any dwelling unit(s).

*Dwelling unit.* One (1) or more rooms connected together in a residential building or residential portion of a building, which are arranged, designed, used and intended for use by one (1) or more human beings living together as a family and maintaining a common household for owner occupancy or rental or lease on a weekly, monthly, or longer basis; and which includes lawful cooking, eating, sleeping space and sanitary facilities reserved solely for the occupants thereof.



*Educational services.* An establishment providing academic or technical instruction or primarily engaged in offering educational courses and services, including libraries, student exchange programs and curriculum development.

*Enlargement (pertaining to adult entertainment only).* An increase in the size of the building, structure or premises in which the adult entertainment business is conducted by either construction or use of an adjacent building or any portion thereof whether located on the same or an adjacent lot or parcel of land.

*Erect.* Activity of constructing, building, raising, assembling, placing, affixing, attaching, creating, or any other way of bringing into being or establishing.

*Establishing an adult entertainment business.* Shall mean and include any of the following:

- (1) The opening or commencement of any such business as a new business;
- (2) The conversion of an existing business, whether or not an adult entertainment business, to any of the adult entertainment businesses defined herein;
- (3) The relocation of any such business.

*Excavation.* The breaking of ground, except common household gardening, ground care and agricultural activity.

*Family.* One (1) or more human beings related by blood, marriage, adoption, or guardianship together with incidental domestic servants and temporary noncompensating guests; or not more than four (4) human beings not so related, occupying a dwelling unit and living as a single housekeeping unit.

*Fast food restaurant.* See restaurant, fast food.

*Floor area, gross.* The number of the square feet of horizontal floor area of a building measured from the exterior faces of the exterior walls or from the center line of walls separating two (2) abutting buildings.

*Front lot line.* See lot line, front.

*Front yard.* See yard, front.

*Frontage (street frontage).* The line of contact of a property with the street right-of-way along a lot line which allows unobstructed, direct access to the property.

*Garage, commercial.* Any building designed and intended for the storage or repair of motor vehicles for compensation.

*Gasoline service station.* Any building, land area or other premises or portion thereof, used or intended to be used for the retail dispensing or sales of vehicular fuels; which may include as an accessory use minor automotive repairs; the sale and installation of lubricants, tires, batteries; car washes; and similar accessory uses. Such establishments shall provide a facility where gasoline and other motor fuels are stored and subsequently dispensed by use of fixed, approved dispensing equipment by customers or employees.

*Grade, established street.* The crown elevation of a street pavement level abutting a property (as fixed by the Department of Public Works).

*Grade level (adjacent ground elevation).* The lowest point of elevation of the finished surface of the ground, paving or sidewalk and similar surface improvements within the area between the exterior walls of a primary building or structure and the property line, or when the property line is more than ten (10) feet from such walls, between such walls and a line ten (10) feet away from and paralleling such walls.

*Grocery store.* A commercial establishment, commonly known as a supermarket, food or grocery store, primarily engaged in the retail sale of canned foods and dry goods, such as tea, coffee, spices, sugar, and flour; fresh fruits and vegetables; and fresh and prepared meats, fish and poultry.

*Gross floor area.* See floor area, gross.

*Gross floor area, total.* The sum of the gross horizontal areas of all floors below the roof and within the exterior faces of the exterior walls of principal and accessory buildings or the center lines of walls separating two (2) abutting buildings.

*Gross leasable area.* The total floor area which is designed for the tenant's occupancy and exclusive use.

*Ground cover.* Low-growing plants less than eighteen (18) inches in height with a spreading growth habit, such as grasses, vines, flowers, and the like.

*Ground floor.* That story which contains finished floor area closest to, but not below, grade level. In cases in which the only story with finished floor area is below grade level, that story with finished floor area closest to grade level shall be considered the ground floor.

*Handicap ramp.* See pedestrian ramp.

*Hardsurfaced.* Quality of an outer area being solidly constructed of pavement, brick, paving stone, or a combination thereof.

*Hardware store.* A commercial establishment primarily engaged in the retail sale of a number of basic hardware lines, such as tools, builders' hardware, paint and glass, housewares and household appliances, and cutlery.

*Health care facility.* A facility or institution, principally engaged in providing services for health maintenance, diagnosis or treatment of human disease, pain, injury, deformity or physical condition.

*Health services.* Medical, surgical or other similar services provided to individuals, including services provided by physicians, dentists, and other health practitioners, medical and dental laboratories, outpatient care facilities or blood banks.

*Hedge.* A row or rows of closely planted shrubs, bushes, etc., creating a vegetative barrier.

*Height, building.* The vertical distance above a reference line measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the height of the highest gable of a pitched or hipped roof. The reference line shall be selected by either of the following, whichever yields a greater building height:

- (1) The elevation of the highest adjoining sidewalk or ground surface within a ten-foot horizontal distance from and paralleling the exterior wall of the building or structure when such sidewalk or ground surface is not more than ten (10) feet above lowest grade;
- (2) An elevation ten (10) feet higher than the lowest grade when such sidewalk or ground surface is more than ten (10) feet above the lowest grade.

*Home improvement store/center.* A facility for the sale of home, lawn, and garden materials and supplies, brick, lumber, hardware items and other similar materials.

*Hotel.* Any building or group of buildings containing five (5) or more rooms without direct access to the outside, designed or intended to be occupied for sleeping purposes by guests for a fee, often with general kitchen and dining room facilities provided within the building or an accessory building, and which caters to the travelling public.

*Indoor commercial amusement/recreation establishment.* A facility wholly enclosed in a building that offers entertainment or games of skill to the general public for a fee. This includes but is not limited to such facilities as bowling alleys, billiard parlors, or arcades.

*Inoperable vehicle.* A motor vehicle from which there has been removed the engine, transmission or differential or that is otherwise partially dismantled or mechanically inoperable, or any motor vehicle which cannot be driven on a city street without being subject to the issuance of a traffic citation by reason of its operating condition or the lack of a valid license plate.

*Integrated center.* An area of development (commercial, industrial or any combination of commercial, industrial and residential uses) of one (1) or more lots, comprised of:

- (1) A number of individual, nonrelated and separately operated uses in one (1) building sharing common site facilities; or
- (2) One (1) or more buildings containing nonrelated and separately operated uses occupying a common site, which utilize one (1) or a combination of common site facilities, such as driveway entrances, parking areas, driving lanes, signs, maintenance and similar common services; or
- (3) One (1) or more buildings containing unrelated and separately operated uses occupying individual sites, which are interrelated by the utilization of one (1) or a combination of common facilities, such as driveway entrances, public or private street network, parking areas, maintenance and other services.

*Interior access drive.* A minor, private street providing access within the boundaries of a project beginning at the required setback line (see Diagram A).

*Interior access driveway.* Access for vehicular movement to egress/ingress between interior access drives connecting two (2) or more projects or land parcels (see Diagram A).

*Job printer.* A facility for the commercial reproduction, cutting, printing, or binding of written materials, drawings, or labels on a bulk basis using lithography, offset printing, blueprinting and similar methods.

*Landscaping.* Any combination of living plants, such as trees, shrubs, ground cover, thickets with grasses planted, preserved, transplanted, maintained to develop, articulate and enhance the aesthetic quality of the area as well as provide erosion and drainage control and wind protection.

*Landscaping, interior.* Landscaping areas consisting of a combination of trees, shrubs and ground cover located in the interior of vehicular use areas so as to provide visual and climatic relief from broad expanses of pavement and to channelize and define areas for pedestrians and vehicular circulation.

*Legally established nonconforming building or structure.* Any continuous, lawfully established building or structure erected or constructed prior to the time of adoption, revision or amendment, or granted a variance of the zoning ordinance, but which fails, by reason of such adoption, revision, amendment or variance, to conform to the present requirements of the zoning district.

*Legally established nonconforming use.* Any continuous, lawful land use having commenced prior to the time of adoption, revision or amendment or granted a variance of the zoning ordinance, but which fails, by reason of such adoption, revision, amendment, or variance to conform to the present requirements of the zoning district.

*Liquor store, package.* A facility principally for the retail sale of alcoholic beverages for off-premises consumption.

*Loading area.* An off-street area maintained and intended for the maneuvering and temporary parking of vehicles while transferring goods or materials to and from a facility.

*Loading space.* An off-street space or berth used for the temporary parking of a commercial vehicle while transferring goods or materials to and from a facility.

*Local street.* See street, local.

*Lot.* A tract of land designated by its owner(s) to be used or developed as a unit under single ownership or control. A lot may or may not coincide with a lot of record and may consist of:

- (1) A single lot of record;
- (2) A portion of a lot of record; or
- (3) A combination of complete lots of record, or complete lots of record and portions of lots of record, or of portions of lots of record.

For purposes of this definition, ownership includes:

- (1) The person(s) who holds either fee simple title to the property or is a life tenant as disclosed in the records of the township assessor;
- (2) A contract vendee;
- (1) A long-term lessee (but only if the lease is recorded among the records of the county recorder and has at least twenty-five (25) years remaining before its expiration at the time of applying for a permit) (see Diagram C).

*Lot area.* The area of a horizontal plane bounded on all sides by the front, rear, and side lot lines that is available for use or development and does not include any area lying within the right-of-way of any public or private street, alley, or easement for surface access (ingress or egress) into the subject lot or adjoining lots.

*Lot, corner.* A lot abutting upon two (2) or more streets at their intersections, or upon two (2) parts of the same street forming an interior angle of less than one hundred thirty-five (135) degrees (see Diagram C).

*Lot, through.* A lot abutting two (2) parallel streets, or abutting two (2) streets which do not intersect at the boundaries of the lot (see Diagram C).

*Lot line.* The legal boundary of a lot as recorded in the office of the Marion County Recorder.

*Lot line, front.* The lot line(s) coinciding with the street rights-of-way; in the case of a corner lot, both lot lines coinciding with the street rights-of-way shall be considered front lot lines; or in the case of a through lot, the lot line which most closely parallels the primary entrance of the primary structure shall be considered the front lot line, or so declared by the Administrator (see Diagram B).

*Lot line, rear.* A lot line which is opposite and most distant from the front lot line, or in the case of a triangularly shaped lot, a line ten (10) feet in length within the lot, parallel to and at the maximum distance from the front lot line. However, in the case of a corner lot line, any lot line which intersects with a front lot line shall not be considered a rear lot line.

*Lot line, side.* Any lot line not designated as a front or rear lot line.

*Lot of record.* A lot which is part of a subdivision or a lot or a parcel described by metes and bounds, the description of which has been so recorded in the office of the recorder of Marion County, Indiana.

*Main floor area.* The area of a horizontal plane, fully bound by the exterior walls of the primary building or structure, of the floor surface at or above grade level exclusive of vent shafts, decks, garages, uncovered or covered open space.

*Marginal access street.* See street, marginal access.

*Mini-warehouses.* A building or group of buildings containing one (1) or more individual compartmentalized storage units for the inside storage of customers' goods or wares, where no unit exceeds six hundred (600) square feet in area.

*Minor emergency repairs.* Those maintenance repairs necessitating an immediate solution yet not posing an immediate life-safety hazard, nor altering the existing character of the structure (see alteration).

*Motel.* Any building or group of buildings containing five (5) or more rooms with at least twenty-five (25) percent of all rooms having direct access to the outside without the necessity of passing through the main lobby of the building(s), designed or intended to be occupied for sleeping purposes by guests for a fee, where general kitchen and dining room facilities may be provided within the building or an accessory building, and which caters to the traveling public.

*Mulch.* A protective covering of organic substances placed around plants to control weeds and prevent evaporation of moisture or freezing. Plastic, loose gravel, stones or rocks shall not be considered as mulch.

*Neighborhood recycling collection point.* A site where individuals bring household recycling materials to either drop off without compensation, or to redeem the materials for monetary compensation. Beyond any limited sorting, no other processing of the material takes place at the site. All materials are stored completely within the structure while awaiting periodic shipment to the processing facilities. While these collection points may be developed as freestanding sites, they typically are accessory uses sharing the site of a larger primary use. Possible structures for this type of operation include such recycling containers as "igloos," reverse vending machines, trailers, or similar structures.

*Night club.* An establishment engaged primarily in offering entertainment to the general public, in the form of music for dancing or live and recorded performances. The establishment may or may not engage in the preparation and retail sale of alcoholic beverages for consumption on the premises. For the purposes of this chapter, an establishment of a similar nature which caters to, or markets itself predominantly to, persons under twenty-one (21) years of age shall not be construed to be a night club, but rather a commercial amusement/recreation establishment.

*Nonconforming adult entertainment business.* Shall mean any building, structure or land lawfully occupied by an adult entertainment business or lawfully situated at the time of passage of General Ordinance 44, 1984, adopted on July 9, 1984, or amendments thereto, which does not conform after the passage of that ordinance or amendments thereto with the regulations of this chapter.

*Nursery, day.* See day care center.

*Off-street.* A location completely within the boundaries of the lot, and completely off of public or private rights-of-way or alleys or any interior surface access easement for ingress and egress.

*On-center.* Distance at grade from the center of one (1) plant to the center of the next plant.

*Outdoor commercial amusement/recreation establishment.* An open area offering entertainment or games of skill to the general public for a fee. This includes but is not limited to such facilities as golf courses, swimming pools, and baseball/softball fields.

*Outdoor display.* See display, outdoor.

*Outdoor storage.* See storage, outdoor.

*Parking area.* An area of paving other than an open exhibition or display area, not inclusive of interior access drives, driveways, interior access driveways and access drives intended for the temporary storage of automotive vehicles including parking spaces and the area of access for the egress/ingress of automotive vehicles to and from the actual parking space (see Diagram A).

*Parking bay.* The parking module consisting of one (1) or two (2) rows of parking spaces and the aisle from which motor vehicles enter and leave the spaces (see Diagram A).

*Parking space.* An off-street portion of the parking area, which shall be used only for the temporary placement of an operable vehicle (see Diagram A).

*Pavement.* A layer of concrete, asphalt or coated macadam used on street, parking area, sidewalk, or airport surfacing.

*Pedestrian ramp.* An inclined access opening along the curb line at which point pedestrians, unassisted or assisted by a wheelchair, walker or the like, may enter or leave the street; or an incline providing pedestrians, unassisted or assisted by a wheelchair, walker or the like, access from the ground to an elevated surface.

*Permitted use.* Any use by right authorized in a particular zoning district or districts and subject to the restrictions applicable to that zoning district.

*Personal service.* Services provided involving the care of a person or his/her apparel.

*Personal service establishment.* A commercial establishment primarily engaged in providing services generally to individuals involving the care of a person or his/her apparel, such as laundries, photographic portrait studios, barber and beauty shops, shoe repair, tailor, travel bureaus or similar facilities.

*Physically handicapped.* An individual who has a physical impairment including impaired sensory, manual or speaking abilities, which results in a functional limitation in access to and use of a building or facility.

*Plat.* An officially recorded map, as recorded in the office of the Marion County Recorder, or a map to be recorded indicating the subdivision of land including, but not limited to, boundaries and locations of individual properties, streets, and easements.

*Primary building.* The building in which the permitted primary use of the lot is conducted.

*Printer, job.* See job printer.

*Proposed right-of-way.* See right-of-way, proposed.

*Protected district.* Specific classes of zoning districts which, because of their low intensity or the sensitive land uses permitted by them, require additional buffering and separation when abutted by certain more intense classifications of land use. For the purposes of this article, a protected district shall include any dwelling district, hospital district, parks district, university quarter district, SU-1 (church) District or SU-2 (school) District.

*Rear yard.* See yard, rear.

*Reconstruction (pertaining to adult entertainment only).* The rebuilding or restoration of any nonconforming adult entertainment business which was damaged or partially destroyed by an exercise of the power of eminent domain, or by fire, flood, wind, explosion or other calamity or act of God, if the damage or destruction exceeds two-thirds (2/3) of the value of the structure or the facilities affected.

*Recreation facility.* A place, area or structure designed and equipped for the conduct of sport, leisure time activities and other customary and usual recreational activities.

*Recycling container.* Receptacle designed and intended for the collection of cleaned, sorted, solid household waste products, including, but not limited to, glass, plastic, metal and paper.

*Recycling station.* A recycling operation involving further processing (relative to a neighborhood recycling collection point) of materials to improve the efficiency of subsequent hauling. Such a facility typically features

sorting, the use of a crushing apparatus, and the storage of the material until it is shipped out. These businesses usually occupy existing freestanding sites, such as former gasoline stations, or occupy parts of an integrated center parking lot.

*Religious use.* A land use devoted primarily to divine worship together with reasonably related accessory uses, which are subordinate to and commonly associated with the primary use, which may include but are not limited to, educational, instructional, social or residential uses.

*Restaurant, drive-in or drive-through.* Any restaurant designed to permit or facilitate the serving of food or beverages directly to, or permitted to be consumed by, patrons in or on motor vehicles parking or stopped on the premises.

*Restaurant, family.* An establishment where food and drink are prepared, served and consumed primarily within the principal building to the general public. The establishment may have a separate area, or lounge, where alcoholic beverages are served without full food service, provided the area is accessory to the primary use in: 1) square feet; or 2) sales.

*Restaurant, fast food.* An establishment whose principal business is the sale of preprepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building, on-premises or off-premises.

*Resumption (pertaining to adult entertainment only).* Shall mean the reuse or reoccupation of a nonconforming adult entertainment business which has been discontinued for a period of six (6) or more consecutive months.

*Retail trade.* Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods. The establishment typically buys goods for resale to the public.

*Required yard.* See yard, required.

*Right-of-way.* Specific and particularly described strip of land, property, or interest therein devoted to and subject to the lawful use, typically as a thoroughfare of passage for pedestrians, vehicles, or utilities, as officially recorded by the office of the Marion County Recorder.

*Right-of-way, private.* Specific and particularly described strip of privately held land, property, or interest therein devoted to and subject to use for general transportation purposes or conveyance of utilities whether or not in actual fact improved or actually used for such purposes, as officially recorded by the office of the Marion County Recorder.

*Right-of-way, proposed.* Specific and particularly described land, property, or interest therein devoted to and subject to the lawful public use, typically as a thoroughfare of passage for pedestrians, vehicles, or utilities, as officially described in the Marion County Thoroughfare Plan as adopted and amended by the Metropolitan Development Commission.

*Right-of-way, public.* Specific and particularly described strip of land, property, or interest therein dedicated to and accepted by the municipality to be devoted to and subject to use by the general public for general transportation purposes or conveyance of utilities whether or not in actual fact improved or actually used for such purposes, as officially recorded by the office of the Marion County Recorder.

*Roof line.* The uppermost edge of the water-carrying surface of a building or structure.

*Satellite dish antenna.* A device incorporating a reflective surface that is solid, open mesh, or bar configured and is in the shape of a shallow dish, cone or horn. Such device shall be used to transmit or receive radio or electromagnetic waves between terrestrially or orbitally based devices.

*Screening.* A method of visually shielding or obscuring a nearby structure, building or use on an abutting or adjacent property or lot from another by fencing, walls, berms, or densely planted vegetation.



*Seasonal retail sales use, temporary.* A temporary use established for a fixed period of time, for the retail sale of seasonal products, including, but not limited to, such items as food, Christmas trees, and live plants. This use may or may not involve the construction or alteration of any permanent building or structure.

*Semi-public use.* See use, semi-public.

*Service bay.* Individual area within an automobile repair or service facility where services, including but not limited to car washes, oil changes and repairs, are performed on a motor vehicle.

*Services involving specified sexual activity or display of specified anatomical areas.* Any combination of two (2) or more of the following activities:

- (1) The sale or display of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representation which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas;
- (2) The presentation of films, motion pictures, video cassettes, slides, or similar photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons;
- (3) The operation of coin- or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image producing devices per machine at any one (1) time and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas;
- (4) Live performances by topless or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas;
- (5) The operation of a massage school, massage parlor, massage therapy clinic, bathhouse, escort service, body painting studio or nude modeling studio, as these terms are defined in Chapter 911 of this Code.

*Setback.* The minimum horizontal distance established by ordinance between a proposed right-of-way line or a lot line and the setback line (see Diagram B).

*Setback line.* A line that establishes the minimum distance a building, structure, or portion thereof, can be located from a lot line or proposed right-of-way line (see Diagram B).

*Shopping center.* A group of commercial establishments planned, constructed and managed as a total entity with customer and employee parking provided on-site, provision for goods delivery separated from customer access and often with protection from the elements.

*Shrub.* A woody plant of relatively low height (not exceeding ten (10) to twelve (12) feet in height), branching from the base.

*Side yard.* See yard, side.

*Sidewalk.* A hardsurfaced walk or raised path along and often paralleling the side of the street intended for pedestrian traffic.

*Sign.* Any structure, fixture, placard, announcement, declaration, device, demonstration or insignia used for direction, information, identification or to advertise or promote any business, product, goods, activity, services or any interests.

*Site plan.* The development plan, or series of plans, drawn to scale, for one (1) or more lots on which is shown the existing and proposed location and conditions of the lot including as required by ordinance, but not limited to: topography, vegetation, drainage, floodplains, marshes, and waterways; open spaces, walkways, means of ingress and egress, utility services, landscaping, buildings, structures, signs, lighting and screening devices, center lines of rights-of-way, and dimensions.

*Specified anatomical areas.* Any of the following:

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areolae; or
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

*Specified sexual activities.* Any of the following:

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse or sodomy;
- (3) Fondling or other erotic touchings of human genitals, pubic regions, buttocks or female breasts;
- (4) Flagellation or torture in the context of a sexual relationship;
- (5) Masochism, erotic or sexually oriented torture, beating or the infliction of pain;
- (6) Erotic touching, fondling or other such contact with an animal by a human being; or
- (7) Human excretion, urination, menstruation, vaginal or anal irrigation as a part of or in connection with any of the activities set forth in (1) through (6) above.

*Stacking space, off-street.* An area, separate from or in addition to, the required parking area, reserved for the temporary retention of vehicles which are queuing up or utilizing the services of a drive-through service unit.

*Storage, outdoor.* An outdoor area used for the long-term deposit (more than twenty-four (24) hours) of any goods, material, merchandise, vehicles or junk.

*Storage area.* An area designated, designed and intended for the purpose of reserving property for a future use and distinguished from areas used for the display of property intended to be sold or leased.

*Storage room.* An enclosed area integrated into and sharing a common or party wall or walls within a primary building, while designed and intended for the purpose of reserving property for a future use.

*Story.* That part of a building, with an open height of not less than seven (7) feet six (6) inches, except a mezzanine, included between the upper surface of one (1) floor and the lower surface of the next floor, or if there is no floor above, then the ceiling next above. A basement shall constitute a story only if it provides finished floor area.

*Street, collector.* A street primarily designed and intended to carry vehicular traffic movement at moderate speeds (e.g., thirty-five (35) mph) between local streets and arterials while allowing direct access to abutting property(ies) (see Diagram D).

*Street, cul-de-sac.* A street having only one (1) open end which is permanently terminated by a vehicle turnaround (see Diagram D).

*Street, expressway.* A street so designated by the Official Thoroughfare Plan for Marion County, as amended.

*Street, freeway.* A street so designated by the Official Thoroughfare Plan for Marion County, as amended.

*Street, local.* A street primarily designed and intended to carry low volumes of vehicular traffic movement at low speeds (e.g., twenty (20) to thirty (30) mph) within the immediate geographic area with direct access to abutting property(ies) (see Diagram D).

*Street, marginal access.* A local street with control of access auxiliary to and located on the side of an arterial, thoroughfare, expressway, or freeway for service to abutting property(ies) (see Diagram D).

*Street, parkway.* A street serving through vehicular traffic and equal to or more than five thousand two hundred eighty (5,280) feet in length, the adjoining land on one (1) or both sides of which is predominantly dedicated or used for park purposes, and shall conform to the comprehensive plan and the thoroughfare plan.

*Street, primary.* A street so designated by the Official Thoroughfare Plan for Marion County, as amended.

*Street, private.* A privately held right-of-way, with the exception of alleys, essentially open to the sky and open for the purposes of vehicular and pedestrian travel affording access to abutting property, whether referred to as a street, road, expressway, arterial, thoroughfare, highway, or any other term commonly applied to a right-of-way for such purposes. A private street may be comprised of pavement, shoulders, curbs, sidewalks, parking space, and the like.

*Street, public.* A publicly dedicated, accepted and maintained right-of-way, with the exception of alleys, essentially open to the sky and open to the general public for the purposes of vehicular and pedestrian travel affording access to abutting property, whether referred to as a street, road, expressway, arterial, thoroughfare, highway, or any other term commonly applied to a public right-of-way for such purposes. A public street may be comprised of pavement, shoulders, gutters, curbs, sidewalks, parking space, and the like.

*Street, secondary.* A street so designated by the Official Thoroughfare Plan for Marion County, as amended.

*Structural alteration.* Shall mean any change which would prolong the life of the supporting members of a building or structure such as bearing walls, columns, beams or girders, except such changes as are ordered made pursuant to the provisions of the Unsafe Building Law, IC 36-7-9-1, and any amendments thereto.

*Structure.* A combining or manipulation of materials to form a construction, erection, alteration or affixation for use, occupancy, or ornamentation, whether located or installed on, above, or below the surface of land or water.

*Subdivision.* The division of any parcel of land shown as a unit, as part of a unit or as contiguous units, on the last preceding transfer of ownership thereof, into two (2) or more parcels or lots, for the purpose, whether immediate or future, of transfer of ownership or building development.

*Substance abuse treatment facility.* A facility, the primary function of which is to administer or dispense a schedule II controlled substance (as listed under IC 35-48-2-6(b) or (c)) to a narcotic addict for maintenance or detoxification treatment.

*Tavern.* An establishment used primarily for the serving of liquor by the drink to the general public, but where minors cannot be within the use, and where food or packaged liquors may be served or sold only as accessory to the primary use.

*Temporary seasonal retail sales use.* See seasonal use, temporary.

*Temporary use.* An impermanent land use established for a limited and fixed period of time with the intent to discontinue such use upon the expiration of the time period.

*Theatre, drive-in.* An open lot with its appurtenant facilities devoted primarily to the showing of motion pictures or theatrical productions on a paid admission basis to patrons seated in motor vehicles.

*Theatre, motion picture.* A building or part of a building which is devoted primarily to showing motion pictures to the public for a fee.

*Theatre, legitimate.* A building or structure or part thereof which is devoted primarily for the presentation of live dance, dramatic, musical or comedic performances.

*Thoroughfare.* A street primarily serving through vehicular traffic, including freeways, expressways, primary arterials, and secondary arterials.

*Thoroughfare plan.* The segment of the Comprehensive Plan for Marion County, Indiana, adopted by the Metropolitan Development Commission of Marion County, Indiana, pursuant to IC 36-7-4 that sets forth the location, alignment, dimensions, identification and classification of freeways, expressways, parkways, primary arterials, secondary arterials, or other public ways as a plan for the development, redevelopment, improvement, and extension and revision thereof.

*Through lot.* See lot, through.

*Total gross floor area.* See gross floor area, total.

*Transitional yard.* See yard, transitional.

*Trash container.* Receptacle intended for the disposal, collection or temporary storage of unsorted waste products or refuse.

*Trash enclosure.* An accessory structure enclosed on at least three (3) sides that is designed to screen and protect waste receptacles from view and to prevent waste debris from dispersing outside the enclosure.

*Tree survey.* An inventory of all trees on a lot or project before construction, alteration or excavation activity occurs identifying species, location, caliper, and dripline of trees. In the case of dense tree stands that exceed six hundred (600) square feet in area and seventy-five (75) percent branch coverage of the ground surface, the location of the outer boundary of the tree stands' dripline with a listing of the predominant species and caliper may be substituted for a detailed inventory.

*Use, semi-public.* A service offered by a not-for-profit organization to the general public for either no charge or a nominal fee.

*Variety store.* Commercial establishments primarily engaged in the retail sale of a variety of merchandise in the low price range. Sales usually are made on a cash-and-carry basis, with the open-selling method of display and customer selection of merchandise. These stores generally do not carry a complete line of merchandise, are not departmentalized, do not carry their own charge service, and generally do not deliver merchandise.

*Vending machine.* An automatic device which dispenses goods or services to the customer upon receipt of monetary compensation.

*Walkway.* A hardsurfaced walk or raised path for pedestrian traffic.

*Yard, front.* An open space unobstructed to the sky, extending fully across the lot while situated between the front lot line and a line parallel thereto, which passes through the nearest point of any building or structure and terminates at the intersection of any side lot line (see Diagram B).

*Yard, rear.* An open space unobstructed to the sky, extending fully across the lot situated between the rear lot line and a line parallel thereto which passes through the nearest point of any building or structure and terminates at the intersection of any side lot line (see Diagram B).

*Yard, required.* That portion of any yard abutting a lot line having a minimum depth as area required by the particular zoning district in which it is located.

*Yard, side.* An open space unobstructed to the sky, extending the length of the lot situated between a side lot line and a line parallel thereto which passes through the nearest point of any building or structure and terminates at the point of contact with any rear or front yards or any lot line, whichever occurs first (see Diagram B).

*Yard, transitional required.* That portion of any yard abutting a protected district having a minimum depth as required by the particular zoning district in which it is located and acting as a buffer between two (2) or more land uses of different intensity (see Diagram B).


SECTION 2. The expressed or implied repeal or amendment by this ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities, and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance had not been adopted.

SECTION 3. Should any provision (section, paragraph, sentence, clause, or any other portion) of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provision or provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the Council in adopting this ordinance. To this end the provisions of this ordinance are severable.

SECTION 4. This ordinance shall be in effect from and after its passage by the Council and compliance with Ind. Code § 36-3-4-14.

The foregoing was passed by the City-County Council this 16th day of September, 2002, at 7:26 p.m.

ATTEST:

  
Suellen Hart, Clerk, City-County Council

  
Dr. Beurt SerVaas  
President, City-County Council

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I, Suellen Hart, Clerk of the City-County Council, Indianapolis, Marion County, Indiana, do hereby certify the above and foregoing is a full, true, and complete copy of Proposal No. 439, 2002, a Proposal for GENERAL ORDINANCE, passed by the City-County Council on the 16th day of September, 2002, by a vote of 28 YEAS and 0 NAYS, and was retitled General Ordinance No. 92, 2002, and now remains on file and on record in my office.

WITNESS my hand and the official seal of the City of Indianapolis, Indiana, this 18th day of September, 2002.

Suellen Hart, Clerk, City-County Council

(SEAL)